

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 07-0152
Sales and Use Tax
For The Tax Period 2004 - 2005

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ISSUES

I. Sales and Use Tax – Imposition of Use Tax.

Authority: IC § 6-8.1-5-1(c); IC § 6-2.5-2-1; IC § 6-2.5-3-2(a); IC § 6-2.5-6-7; IC § 6-2.5-6-13.

The Taxpayer protests the imposition of use tax.

STATEMENT OF FACTS

The Taxpayer is a corporation that operates an auto body repair shop. Pursuant to an audit for the years 2004-2005, the Indiana Department of Revenue assessed additional use tax and interest. The Taxpayer protested the assessment and this Letter of Findings results.

I. Sales and Use Tax – Imposition

DISCUSSION

The Taxpayer was in the business of repairing and refinishing motor vehicles. In performing these repairs, the Taxpayer used consumable items such as masking tape, plastic sheeting, sandpaper, abrasive discs, cut-off wheels, cleaners, buffing pads, razor blades, and cleaning supplies. The Department assessed use tax on the Taxpayer's use of these items. The Taxpayer protested this assessment. The Taxpayer included the taxed consumable supplies as materials on the invoices to customers pursuant to insurance industry rules. As invoiced materials, the Taxpayer collected and remitted sales tax on the consumable supplies on which the Department assessed use tax. The Taxpayer argued that since sales tax was collected and remitted on these items, the Department should not assess use tax on the consumable supplies.

Tax assessments are presumed to be valid. IC § 6-8.1-5-1(c). The Taxpayer bears the burden of proving that any assessment is incorrect. *Id.*

Indiana imposes a sales tax on the transfer of tangible personal property in a retail transaction. IC § 6-2.5-2-1. Indiana imposes a complementary excise tax, the use tax, on tangible personal property purchased in a retail transaction and stored, used, or consumed in Indiana. IC § 6-2.5-3-2(a).

The shop supplies were consumed in the provision of a service, the repair of damaged vehicles. The shop supplies were not sold to the customers in a retail transaction. The Taxpayer was the final user of the shop supplies. Therefore, the Department properly imposed use tax on the Taxpayer's use of the shop supplies.

The Taxpayer protested that it should not have to pay sales tax twice. The Taxpayer is not being assessed sales tax twice. The Taxpayer billed sales tax to its customers on the consumable supplies in error. The customers have the right to claim a refund of the sales taxes improperly paid. IC § 6-2.5-6-13. The Department properly imposed use tax on the consumable supplies which the Taxpayer used in repairing vehicles.

The Taxpayer also stated that it relied on advice it received in January 2004 from an employee of the Department. That employee allegedly told the Taxpayer that they were totally tax exempt and did not need to pay use tax or sales tax on the Taxpayer's purchases of materials used in repairing and refinishing vehicles. Due to the Taxpayer's reliance on a statement by the employee, the Department did not assess the negligence penalty against the Taxpayer.

FINDING

The Taxpayer's protest is respectfully denied.